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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services

FILE:

Office: INDIANAPOLIS, IN

Date: APR 22 2004

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship pursuant to section 320 of the Immigration and Nationality Act, 8 U.S.C. §1431.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Karachi, Pakistan, on November 26, 1983. The applicant's stepfather [REDACTED] was born in Gujrat, Pakistan in 1945, and he became a naturalized U.S. citizen on October 12, 1990. The applicant's mother [REDACTED] was born in Karachi, Pakistan, and is not a U.S. citizen. The applicant's mother and stepfather (Mr. [REDACTED]) married in Islamabad, Pakistan in May of 1992. The applicant was admitted into the United States on December 22, 1992, with an immigrant visa and she is a lawful permanent resident. The applicant seeks a certificate of citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431, based on her relationship to her stepfather.

The director found the applicant had failed to establish that she was legally adopted by her stepfather. The director concluded that the applicant therefore did not meet the definition of "child" as set forth in section 101 of the Immigration and Naturalization Act (the Act), 8 U.S.C. § 1101. The application was denied accordingly.

On appeal, the applicant asserts that the marriage between her mother and stepfather constituted an adoption in Pakistan. In support of her assertions, the applicant submits a copy of her Pakistani passport listing Mr. [REDACTED] as her father. The applicant also submits several affidavits from personal acquaintances stating that her mother and stepfather married on May 15, 1992, and that Mr. [REDACTED] shares custody and guardianship of the applicant.

Section 320 of the Act states, in pertinent part:

(a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:

- (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
- (2) The child is under the age of eighteen years.
- (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

(b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

Section 101(b)(1) of the Act states in pertinent part that:

(b) As used in titles I and II-

- (1) The term "child" means an unmarried person under twenty-one years of age who is-

...

- (E) (i) a child adopted while under the age of sixteen years if the child

has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act

Section 101(c) of the Act states that:

(c) As used in title III-

(1) The term "child" means an unmarried person under twenty-one years of age and includes a child . . . except as otherwise provided in sections 320, and 321 of title III, a child adopted in the United States, if such . . . adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the . . . adopting parent or parents at the time of such . . . adoption.

The AAO notes that although a stepchild qualifies as a "child" pursuant to section 101(b)(1)(B) of the Act, 8 U.S.C. § 1101(b)(1)(B), for nonimmigrant and immigrant visa Title I and Title II of the Act purposes, a stepchild is not included in the definition of a child under section 101(c)(1) of the Act, for Title III naturalization and citizenship purposes.¹ Rather, under sections 101(c) and 320 of the Act, a U.S. citizen parent cannot obtain citizenship for a stepchild unless the parent legally adopts the child and presents, among other things, proof of such adoption prior to the child's 16th birthday. The adopted child must additionally establish that he or she meets the requirements set forth in section 101(b)(1) of the Act.

The AAO finds that in the present case, the applicant has failed to establish that she was legally adopted by her U.S. citizen stepfather or that she otherwise meets the definition of "child" as set forth in section 101(c) of the Act. The AAO finds the applicant's assertion that the marriage of her parents in itself constituted a legal adoption in Pakistan is unsupported by any legal evidence in the record. The AAO finds further that the affidavits submitted by personal acquaintances attesting to Mr. [REDACTED] custody and guardianship over the applicant are uncorroborated by any legal or judicial evidence in the record. The AAO additionally finds the fact that Mr. [REDACTED] listed as the applicant's father on her Pakistani passport does not establish, without further corroborating evidence, that the applicant was legally adopted in Pakistan.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See also* § 341 of the Act, 8 U.S.C. § 1452. The applicant has not met her burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

¹ The AAO notes that pursuant to section 101(b)(1)(B) of the Act:

(b) As used in titles I and II-

(1) The term "child" [includes] an unmarried person under twenty-one years of age who is-

...

(B) a stepchild, whether or not born out of wedlock; provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred